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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2016

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Ex parte Joshua Kilgro

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CRIMINAL APPEALS

(In re: Joshua Kilgro

v.

State of Alabama)

(DeKalb Circuit Court, CC-13-44; DC-11-50211;  
Court of Criminal Appeals, CR-14-1194)

BOLIN, Justice.

WRIT QUASHED. NO OPINION.

1150533

Stuart, Shaw, Main, Wise, and Bryan, JJ., concur.

Parker and Murdock, JJ., dissent.

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MURDOCK, Justice (dissenting).

Following the conviction of the defendant, Joshua Kilgro, in this criminal case the circuit court took up the issue of Kilgro's sentence in two separate hearings, one held on August 4, 2014, and one held on February 19, 2015. Kilgro contends that an order entered on February 25, 2015, constituted the entry by the circuit court of his sentence and that, therefore, Kilgro's appeal of his conviction and sentence following the entry of that order was timely.<sup>1</sup> The Court of Criminal Appeals dismissed Kilgro's appeal as untimely, however, based on its conclusion that the circuit court pronounced sentence at the August 4 hearing. Kilgro v. State (No. CR-14-1194, Dec. 11, 2015), \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2015) (table).

The entry of a sentence in a criminal case does not occur unless and until the circuit court makes a decision on both the durational and the dispositional aspects of the sentence. I see no basis for concluding that the application of this fundamental requirement would vary depending on whether a

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<sup>1</sup>Both the State and Kilgro agreed that the circuit court could enter a sentencing order after listening to a recording following the February 19 hearing.

1150533

defendant is sentenced within or outside a sentencing-guideline scheme. To the extent the Court of Criminal Appeals' opinion in Hyde v. State, 185 So. 3d 501 (Ala. Crim. App. 2015), contains language suggesting otherwise, I believe that suggestion to be inadvertent and, in any event, erroneous. I therefore disagree with the decision of the Court of Criminal Appeals to dismiss Kilgro's appeal as untimely based, ultimately, on this problematic language in Hyde.

Even aside from, but especially in light of, the foregoing, and based on my review of the statements made by the circuit court at the August 4 hearing and in its February 25 order, I conclude that the circuit court did not intend to, and did not, sentence Kilgro until it entered the February 25 order. Accordingly, I respectfully dissent from the decision to quash the writ in this case.

Parker, J., concurs.